

## THE CHANCELLOR:

By an agreement, filed on the 3d of February last, these cases are to be consolidated and the testimony and exhibits taken and filed in the two cases, are to be used indiscriminately in each.

But the cases though thus blended and argued together, must, to some extent, be considered separately, as there are questions which are not common to both, and which must be kept distinct to avoid confusion.

The substance and the object of the bill filed by Brown was stated in the opinion delivered by this court on the 12th of October last, when it was said that the settlement between him and Stewart, of the 21st of December, 1843, must be regarded as concluding all antecedent transactions between the parties, unless it could be shown by evidence, to have been founded upon mistake or to have been procured by fraud, (see 1 *Md. Ch. Decisions*, 87,) and the question, therefore, now is, confining our attention for the present to the case instituted by Brown, whether Stewart has succeeded in showing either mistake or fraud in the obtention of that settlement.

The injustice of which Stewart complains is, that he was not in that settlement credited with a full moiety of the commissions allowed to Brown and himself as administrators of Thomas R. Cross, in their account, which was passed on the 3d of January, 1843. In that account there was allowed the accountants the sum of \$785 96, whilst in the settlement referred to, the last credit in which is under date the 12th of November, 1842, Stewart is credited with only \$200 on account of commissions.

The counsel of Stewart insists, that as this credit preceded in point of time the allowance of commissions by the Orphans Court, it is to be regarded as a mere conjectural estimate of the commissions, and to be corrected when the actual amount should be fixed by the Orphans Court.

Such, however, does not appear to be the character of the credit as displayed upon the face of the paper. On the contrary, looking to the language in which the credit is expressed there is every reason to suppose it was the sum definitely fixed